

# Plan Comparison for Governmental Plan Sponsors

[Note that enabling legislation is required in order for a governmental employer to sponsor any type of retirement plan]

Category	457(b) Deferred Compensation Plan	415(m) Qualified Governmental Excess Benefit Plan	401(a) Qualified Pension (Fixed Benefit) or Discretionary Defined Contribution Plan	401(a) Deferred Retirement Option Plans (DROPS)
GENERAL DESCRIPTION	<ul style="list-style-type: none"> <li>➤ A deferred compensation plan that allows employees or independent contractors performing services for the employer to defer (on a voluntary basis) a portion of their salary to the plan.</li> <li>➤ The plan may also permit designated Roth and/or employer contributions.</li> </ul>	<ul style="list-style-type: none"> <li>➤ A retirement plan maintained solely to the extent that benefits or contributions under a defined benefit or defined contribution plan exceed the Section 415 annual limit on benefits and contributions.</li> <li>➤ May be used to attract and retain key employees whose retirement benefits would otherwise (under qualified retirement plans) have been reduced under the Section 415 annual limit on benefits and contributions.</li> <li>➤ Direct or indirect election by the participant to defer compensation into the 415(m) plan is not permitted.</li> </ul>	<p>A money purchase pension plan provides definitely determinable benefits. A discretionary (profit sharing) 401(a) plan provides for a definite predetermined formula for allocating contributions. Either a pension or discretionary 401(a) plan may include 414(h) pick-up contributions. A 414(h) pick-up contribution is an employee mandatory contribution (considered to be excluded from an employee's gross wages and thus is considered pre-tax) made under a governmental 401(a) qualified plan.</p>	<ul style="list-style-type: none"> <li>➤ A DROP can be either a feature of an existing 401(a) defined benefit plan or a stand-alone 401(a) defined contribution plan that provides either another optional form of payment at retirement (for existing plans) or a supplemental benefit (stand-alone plan) for an eligible class of participants.</li> <li>➤ Under a DROP, a participant ceases future benefit accruals under the formula under the existing plan. In that case, the DROP benefit is determined based on the date of participation in the DROP.</li> <li>➤ DROP benefit may be payable upon attainment of a distributable event under the plan.</li> <li>➤ Plan counsel needs to consider whether the DROP raises any issues concerning compliance with the Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act (OWBPA), which require that an employee benefit plan may neither involuntarily retire an employee nor result in age discrimination concerning an employee.</li> </ul>

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ELIGIBLE PARTICIPANTS	Participants may include employees and independent contractors.	Participants are individuals in qualified retirement plans who have exceeded the Section 415 annual limit.	Participants may include employees and leased employees. Independent contractors may not be covered by a 401(a) plan.	Eligible participants are those who have satisfied a stated number of years of service or have reached a stated age. For purposes of participation under the existing plan, the individual is considered retired under the existing 401(a) defined benefit plan, but is eligible to participate in the DROP. As a result, typical years of participation in a DROP may range from 3 to 7 years.
FUNDING VEHICLES AND PARTICIPANT RIGHTS	Assets must be held in either a: <ul style="list-style-type: none"> <li>➤ Trust,</li> <li>➤ Custodial account, or</li> <li>➤ Annuity contract</li> </ul> for the exclusive benefit of the participants and their beneficiaries.  Because amounts are held in trust or other custodial-like arrangement, plan assets are not subject to the claims of the employer's general creditors.  Employer contributions are nonforfeitable to the extent vested. Participant contributions are considered fully vested.	<ul style="list-style-type: none"> <li>➤ As a governmental plan (which is exempt under Title I of ERISA), the sponsor has the flexibility to determine whether to fund the benefit or maintain an unfunded plan (paying benefits as due). <i>Note:</i> If the plan is unfunded, benefits are payable from the employer's general assets and are subject to the claims of the employer's general creditors.</li> <li>➤ Contributions are nonforfeitable to the extent vested.</li> </ul>	Same as 457(b) plan	Same as 457(b) plan
ERISA APPLICABILITY	Governmental employers are statutorily exempt from Title I of ERISA.	Same as a 457(b) plan	Same as a 457(b) plan	Same as a 457(b) plan

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CONTRIBUTION LIMITS	<p>General rule: Deferrals (including salary reduction contributions and non-elective employer contributions) cannot exceed the lesser of \$17,500 (for 2014 adjusted for cost of living) or 100% of "includible compensation". Includible compensation means compensation for the calendar year, reduced for an employee's 414(h) pickups, but increased for deferrals to the employer's 457(b), 401(k), 403(b) and 125 cafeteria plans.</p> <p>Special catch-up: may generally defer up to twice the general deferral limit for the 3 years prior to the year in which participant attains and elects normal retirement age under the plan.</p> <p>Age 50+ catch-up: participants who are at least age 50 may make an additional \$5,500 (for 2014 adjusted for cost of living) annual contribution. A participant is not permitted to use the special catch-up and the age 50+ catch-up simultaneously, but must utilize whichever is greater.</p> <p>Note: Contributions to a 457(b) plan are not coordinated with contributions to other plan types. However, such contributions are coordinated with other 457(b) plans sponsored by the employer or any other employer.</p>	<ul style="list-style-type: none"> <li>➤ Up to 100% of compensation.</li> <li>➤ If the plan is unfunded, it must provide that amounts are subject to a substantial risk of forfeiture.</li> </ul>	<p>Employer, employee and forfeiture contributions to the plan are subject to the Section 415(c) limit on annual additions: the lesser of 100% of compensation or \$52,000 (for 2014 adjusted for cost of living).</p>	<p>Same as a 401(a) pension and discretionary plan</p> <p><i>Note:</i> Whether the DROP is maintained as stand-alone 401(a) defined contribution plan or within an existing 401(a) defined benefit plan, the DROP benefit must be tested under IRC Section 415 annual limit on contributions and benefits.</p>

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DEDUCTIBILITY OF CONTRIBUTIONS AND FEDERAL INCOME TAXATION	<p><i>Employer:</i> N/A; employer is not a taxable entity.</p> <p><i>Participant:</i> In general, not includible in gross income for federal (and state, if applicable) tax purposes until distributed. Rollover eligible distributions are includible in gross income and are subject to mandatory 20% withholding unless rolled over to another eligible retirement plan.</p>	<p><i>Employer:</i> Income accruing under a 415(m) plan is considered income derived from the exercise of an essential governmental function. As a result, such income is not unrelated business taxable income.</p> <p><i>Participant:</i></p> <ul style="list-style-type: none"> <li>➤ If the plan is considered unfunded (including amounts held in a rabbi trust), amounts will be included in gross income for federal income tax purposes when paid or otherwise made available (constructive receipt).</li> <li>➤ If the plan is considered funded, amounts will be included in gross income for federal income tax purposes in the year when services are performed or the year in which the contributions become vested, whichever is later.</li> </ul>	<p><i>Employer:</i> Same as a 457(b) plan.</p> <p><i>Participant:</i> Same as a 457(b) plan.</p>	<p><i>Employer:</i> Same as a 457(b) plan.</p> <p><i>Participant:</i> Same as a 457(b) plan.</p>	
NON-DISCRIMINATION TESTING	N/A	Same as 457(b) plan	Same as 457(b) plan	Same as 457(b) plan	Permitted up
LOANS	Permitted up to IRC Sec. 72(p) limits.	Not Permitted	Same as 457(b) plan	Same as 457(b) plan	
QUALIFIED DOMESTIC RELATIONS ORDERS	Permitted	QDRO rules not applicable. A DRO may direct that benefits be paid to an alternate payee once a participant has attained a distributable event.	Same as a 457(b) plan	Same as a 457(b) plan	

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WITHHOLDING ON DISTRIBUTIONS, REPORTING	<ul style="list-style-type: none"> <li>➤ Distributions are reportable on IRS Form 1099-R.</li> <li>➤ In general, rollover eligible amounts are subject to mandatory 20% withholding unless directly rolled over to another eligible rollover plan.</li> </ul>	Amounts are paid directly to the sponsor.	Same as a 457(b) plan	Same as a 457(b) plan
PERMITTED DISTRIBUTIONS	<ul style="list-style-type: none"> <li>➤ Severance from employment</li> <li>➤ Death</li> <li>➤ Attainment of age 70 ½</li> <li>➤ Unforeseeable emergency</li> <li>➤ Subject to certain requirements, in-service de minimis withdrawal up to \$5,000</li> <li>➤ RMD</li> </ul> <p>Note: special rules apply to designated Roth contributions.</p>	Distributions may be made at any time in accordance with the plan document.	<ul style="list-style-type: none"> <li>➤ Disability</li> <li>➤ Retirement</li> <li>➤ Death</li> <li>➤ Termination of employment</li> <li>➤ In-service withdrawals (discretionary plans only)</li> <li>➤ RMD</li> </ul>	Same as a 401(a) pension and discretionary plan
IRS 10% PREMATURE DISTRIBUTION PENALTY TAX	<p>Generally an IRS 10% premature distribution penalty tax not applicable. However:</p> <ul style="list-style-type: none"> <li>➤ Amounts rolled over from a 457(b) plan to a different plan type would become subject to the IRS 10% premature distribution penalty tax if distributed prior to age 59½ (unless an exception applies).</li> <li>➤ Amounts rolled over from a non-457(b) plan to a 457(b) plan would continue to</li> </ul>	No penalty tax on payments to employees.	<p>An IRS 10% premature distribution penalty tax applies unless the distribution is due to one of the following statutory exemptions:</p> <ul style="list-style-type: none"> <li>➤ On or after reaching age 59 ½</li> <li>➤ To a beneficiary on account of a participant's death</li> <li>➤ Disability</li> <li>➤ Payments made in at least annual installments over the life (or life expectancy) of the participant or the</li> </ul>	Same as a 401(a) pension or discretionary plan

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IRS 10% PREMATURE DISTRIBUTION PENALTY TAX (con't.)	be subject to any applicable IRS 10% premature distribution penalty tax, as if the plan were a qualified plan, upon distribution from the eligible 457(b) plan.		<p>joint lives of the participant and the designated beneficiary after separation from service</p> <ul style="list-style-type: none"> <li>➤ Separation from service on or after attainment of age 55</li> <li>➤ Payments made for medical care, but not in excess of amounts allowable as a deduction under regulations</li> <li>➤ Payments made to an alternate payee pursuant to a QDRO</li> <li>➤ Payments made to satisfy a federal tax levy</li> <li>➤ "Qualified Reservist Distribution"</li> </ul>	
REQUIRED DISTRIBUTIONS (RMD)	<ul style="list-style-type: none"> <li>➤ Required Beginning Date: April 1<sup>st</sup> of the calendar year following the calendar year in which the employee reaches age 70 ½ or retires, whichever is later.</li> <li>➤ Amount: Lifetime payments are generally distributed over the employee's life expectancy. Payments to a beneficiary are generally made over the beneficiary's life expectancy.</li> <li>➤ Penalty Tax: If the amount distributed is less than the minimum required, a 50% excise tax applies to the shortfall.</li> </ul>	RMD not applicable	Same as a 457(b) plan	<p>Same as a 457(b) plan</p> <p><i>Note:</i> If the DROP is within an existing plan, the DROP benefit must be considered incidental to the retirement benefit under the existing plan.</p>

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<p>ROLLOVERS, TRANSFERS &amp; EXCHANGES</p>	<p>Rollovers are permitted among 401(a)/(k), 403(b), governmental 457(b) plans, traditional IRAs, and to Roth IRAs.</p> <p>A 457(b) plan that has a Roth account feature may permit a participant or spousal beneficiary to directly roll over amounts that are both (1) an eligible rollover distribution and (2) a permissible distribution under the plan document to the distributing plan's Roth account.</p> <p>A Participant or spousal beneficiary is permitted to roll over eligible amounts from the plan directly to a Roth IRA.</p> <p>Nonspousal beneficiaries are permitted to roll their distributions to an inherited IRA. Inherited IRAs must satisfy the required minimum distribution rules.</p> <p>Amounts from an eligible 457(b) plan sponsored by a governmental entity may only be <u>transferred</u> to another eligible 457(b) plan sponsored by a governmental entity.</p>	<p>No rollovers permitted</p>	<p>Rollovers: same as 457(b) plan</p> <p>Transfers to another 401(a) plan are permitted, provided that the participant first attains a distributable event (certain transaction or employment change transfers would be permitted without a distributable event).</p>	<p>Same as a 401(a) pension or discretionary plan</p>

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IRS Determination Letters	Currently there is no IRS determination letter program for 457(b) plans. Plan sponsors may apply for an IRS private letter ruling.	Same as 457(b) plan	Plan sponsors may apply for a determination letter for an individually designed plan or may adopt a pre-approved plan document.	Same as a 401(a) pension or discretionary plan
IRS Correction Program	457(b) plan submissions accepted through the Employee Plans Compliance Resolution System (EPCRS) on a provisional basis.	Not applicable	Available through the EPCRS	Same as a 401(a) pension or discretionary plan

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